

Case No. A03-0052 CV (RRB)

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Zuber v. APC Natchiq, Inc.

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1	were talking about sniffing a tank, and I'm just -- I'm	1 required to do confined space entry, I take it? Either
2	trying to understand. The process of a permit or the	2 your coveralls or your oxygen mask or something of that
3	process of a confined space, it's very -- certainly a	3 nature?
4	process you work through. That's one -- one piece of it.	4 A Yes.
5	There's a lot of pieces to that -- to that puzzle where	5 Q Okay, all right. All right, and the people that use those
6	you exercise discretion and independent judgment. So to	6 have to be trained and have nature of certificate or
7	sniff the tank, the actual sniff itself, is a very quick	7 qualification in that regard?
8	minute or two minutes, stick the probe in the tank and get	8 A Should be, yes. You'll almost always go to a job, people
9	a -- get a reading.	9 at the job site are saying we're ready to go, right?
10 Q	Okay, so what -- I'm sorry. What portions of a confined	10 Almost always ready to go. Even the supervisors, we're
11 space entry do involve a safety specialist exercise --	11 ready, we've got a job to do, we got to get going. We	
12 regularly exercising discretion and independent judgment?	12 have to have that person there that says no, you're not,	
13 A	This person is the person that sign -- put their life on	13 you're not -- you don't have the right qualified people, I
14 the -- we as a company, we have already had a fatality,	14 don't think you know what the -- what you're talking	
15 and, you know, we're very near and dear to us around us,	15 about, even though you've got a certification card, I	
16 so it's not something we take lightly. This person does	16 don't feel comfortable with this set-up, there's other	
17 the sniff, if you will, that's a very small piece of it.	17 outside factors you guys don't -- you don't know about, or	
18 But they have to excuse as the management on the job, to	18 that I'm aware of, or that I come here as a senior manager	
19 look at the overall job, see that the people that are out	19 on the job that I can't allow this to go forward, or that	
20 there to do the job, the PPE on the job, the people, have	20 I want you to change the set-up of this job. You're not	
21 the training, can question that training. Just because	21 going forward, job can't go forward without the final	
22 you necessarily have, say, a card that says you're trained	22 approval. Which is the expert on the job.	
23 or have been trained, we have the specialists standing	23 Q Backing up here on these permits, and I've seen one, but	
24 behind to say -- part of the process is always that they	24 it's my recollection there are multiple signatures on	
25 give some kind of a -- they have to be comfortable, they	25 them, the safety specialist, the foreman or	
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1	have to be independent, there's no checklist that they can	1 superintendent, perhaps some others. Is that your
2	go through and say, I am comfortable that Mark Nelson is	2 recollection of how....
3	competent necessarily to go into that tank. There's	3 A Depending upon the permit, sure, whether it's hot work or
4	indicators, there should be training, they should be --	4 whether it's confined space or it's a unit work permit or
5	but they have to be -- they have to be able to look at a	5 whatever the permit, sure.
6	Mark Nelson, give me some -- feel comfortable that I am	6 Q All right, but besides the safety specialist there are
7	trained and competent to go into tank. From -- from A to	7 always additional signatures on a permit, is that....
8	Z there's -- from the start of the set-up of the job to	8 A Typically.
9	the end of the job. And so when I say back there my	9 Q Okay, and that would involve the foreman or
10	earlier statement that they're the eyes and ears of	10 superintendent, is that right?
11	management, we would want them to be comfortable with that	11 A Typically not the superintendent, but the -- whoever the
12	process before the permit was ever signed. Because the	12 key operations set-up person is on the job, right, whether
13	permit itself is another two-minute function of just doing	13 it be a foreman or lead or....
14	the check -- checklist. But it's not -- you can't have a	14 Q Okay, and perhaps additional signatures as well?
15	checklist for everything that's part of that process.	15 A Could be.
16 Q	Okay, so you're saying that a safety specialist would be	16 Q Okay. If the safety policy or the Alaska Safety Handbook
17	exercising discretion and independent judgment by being	17 requires some nature of PPE, training or a certificate for
18	assured that they were comfortable with the particular	18 a person to enter a tank, and they don't have it, whether
19	people that were executing the job task of confined space	19 or not the safety specialist is comfortable with their
20	entry, is that what you just said?	20 knowledge, skills and other abilities, the safety
21 A	Part of it, yes.	21 specialist doesn't have the discretion to sign off on that
22 Q	Okay, now, if somebody -- and you mentioned the PPE, what	22 permit, is that correct?
23	does that mean?	23 A I'm sorry, I....
24 A	Personal protective equipment.	24 Q I'm trying to give you the contrary of what you gave me.
25 Q	Okay, and that's something that's, in some instances,	25 You said....

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1 A Um-hm.
 2 Qwell, look, whether or not these guys are all signed
 3 off and all stamped, sealed, delivered, ready to go....
 4 A Okay.
 5 Qif the safety specialist doesn't like it they can --
 6 and I guess this'll be a follow-up question in a minute --
 7 ask or tell them to change it.
 8 A They can ask or tell them or stop the job, so to speak.
 9 Q Are you aware of a safety specialist ever stopping a
 10 confined space entry or other type of permit when all the
 11 criteria required by the safety policies were met?
 12 A Not in my recollection. Has -- it is likely that it's
 13 happened? Sure. Can I point to you a specific that I was
 14 involved with directly that wasn't corrected at the safety
 15 specialist level? No.
 16 Q Would that be -- you're saying you're -- I think you said
 17 you're confident that happened. Would that be a regular
 18 event or something of a rare event?
 19 A I think it would be an event that would happen where you --
 20 - you don't have a day to day process. If you're doing
 21 the same, similar routine, like anything -- to a brain
 22 surgeon -- you do the same thing day after day, it becomes
 23 routine. May not just want anybody step in and doing
 24 that, but whatever the -- if you can do it over and over
 25 again, it does -- it becomes routine. It's typically

1 individual go into a tank with protective gear and a mask
 2 on, they would have to have some type of training or
 3 certificate to do that. Is that so, to your knowledge?
 4 A Yes.
 5 Q Okay, so one day Zuber or a safety specialist goes to the
 6 job, everything's set up, everything's all set for
 7 permitting, they got the guy, they got his coveralls, they
 8 got the mask, Zuber or the safety specialist knows the
 9 man, they know they've done confined space entry in the
 10 past, they know how to do the job, they trust their
 11 judgment but they don't have the required certificate to
 12 go in the tank under those circumstances. Does the safety
 13 specialist have the discretion to say, go ahead and do the
 14 job anyway?
 15 A Sure, that -- that's the ultimate signature.
 16 Q So he as the safety specialist could say this permit is
 17 required for you to go in the tank, you don't have it, you
 18 can go ahead and go in the tank anyway?
 19 A Would there be a procedure that says you should have all
 20 these things, if -- I think the example you use, if Zuber
 21 had been on the job and the person came and didn't have
 22 his certification card or something, but he was -- he was
 23 comfortable with this thought process, his judgment,
 24 whatever, that this person could do the job for whatever,
 25 as a specialist, his background dictated to him, could he

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1 the -- it's typically the jobs that are set up that are
 2 new or unique, there's been a change, there's been a
 3 factor that can affect that, different chemicals,
 4 different tanks in this case, maybe, that would make a
 5 change to the day to day routine or process. New people
 6 on the job always a concern for anybody in management
 7 because new people come -- even though a new person always
 8 says I can do it, I can do it, I can do it, fact is a lot
 9 of times the new people that end up getting injured. So
 10 we always want that final check, that final competency, if
 11 you will, of that person exercising the discretion and
 12 judgment that this job is -- believe it's ready to go and
 13 I feel comfortable with it.
 14 Q Now, take the contrary of that, have the safety specialist
 15 be comfortable and confident with the personnel, the
 16 equipment and everything else, but there not being a
 17 particular criteria met for doing the permit. For
 18 instance, if the individual needs some nature of EPA
 19 certification, and they don't have it. Even though the
 20 safety supervisor's comfortable knowing that the guy can
 21 do the job and do it safely, does the safety supervisor
 22 have the discretion to say, yeah, go ahead and do it?
 23 A If the -- can you give me a -- an example?
 24 Q Well, unfortunately I don't do the job so it's a little
 25 difficult for me, but I -- I would presume that for an

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1 allow the job to go on? Yeah, because he's the guy that
 2 would be there to stop it.
 3 Q Okay, let's just change that hypothetical you gave me by
 4 -- just to make it clear, you said doesn't have his
 5 certificate, and the inference might be not have it with
 6 him. The hypothetical is the guy does not have the
 7 certification, he's not certified. Can Zuber still then
 8 say, yeah, sure, go ahead and do it?
 9 A Well, I would hope as a specialist he used good judgment
 10 to say, Bubba, if you don't have your certificate, you
 11 haven't been trained, in my judgment I can't allow you to
 12 go in there. You need to go get trained, we need to get
 13 you trained first. I would hope that that would be what
 14 his judgment would conclude. Does he have to call Mark
 15 Nelson and say, can I let this guy in the tank? No. He
 16 -- he's the final authority on the -- on the job. His
 17 judgment might indicate that, holy smokes, should I let
 18 this guy go in or not, it should never come to that. He
 19 should say -- would think in his judgment and discretion
 20 that this guy probably -- obviously doesn't have the
 21 training required so I shouldn't let him in the tank.
 22 Q And he reaches that conclusion by reference to the known
 23 standard that says you got to have the certificate, right?
 24 A There's a -- there's a standard that would say this is a
 25 minimum standard, sure. Minimum training, right.

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1 Q Besides these things we've just talked about, any other
 2 examples you can -- besides the ones you've given me
 3 already, any other examples of instances where you can --
 4 of safety specialists regularly excising discretion and
 5 independent judgment? Do you have any for me?
 6 A You want a -- you want more -- you want me to just give
 7 you more examples of what they have....
 8 Q Yes, if you have them, yes.
 9 A In the day to day -- Well, I guess I -- because their day
 10 to day isn't dictated by a policy, so when -- when a
 11 safety specialist wakes up in the morning, okay, you wake
 12 up, if there's a safety meeting and they go -- maybe they
 13 conduct that safety meeting, they pick their topic.
 14 Nobody's telling them what topic or what -- what's on
 15 their minds. I've heard Mr. Zuber a number of times at
 16 safety meetings talk about his past and military
 17 experience, maybe, and relate that to safety, and he uses
 18 his own judgment. I've never told him what to talk about
 19 or the supervisor. He -- he wants to impress upon his
 20 people, his guys, through his own -- his own judgment and
 21 discretion what he -- where he thinks the hazards and
 22 concerns are of the day or of the week or whatever, so
 23 he's going to use that judgment and discretion first thing
 24 out of the chute, toolbox meeting or safety meeting. He
 25 leaves the -- leave the meeting, he's got an area, but

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1 course of study -- prolonged course of specialized
 2 instruction and study?
 3 A You're asking....
 4 Q That's the question yes.
 5 A What -- I believe so, yes.
 6 Q Okay, in Mr. Zuber's instance in particular what field of
 7 science did he have a prolonged course of specialized
 8 instruction and study, science or learning?
 9 A Are you asking me for a formal background or -- or
 10 learning customarily acquired by a long course of
 11 specialized instruction and study?
 12 Q I think they're the same thing, but what -- for a safety
 13 specialist, I guess my first question -- let's go back.
 14 My first question is would you consider safety to be a
 15 field of science or learning customarily acquired by a
 16 prolonged course of specialized instruction and study?
 17 A I do, yes.
 18 Q Okay, I'd refer you here to an example, Exhibit 1,
 19 education and job-related experience, this indicates that
 20 you can have a BA in safety from an accredited school, an
 21 associate's degree in safety and two years experience, or
 22 four years experience at safety. So it appears that you
 23 can substitute four years of experience for education in
 24 that instance, does that seem fair to say?
 25 A By this job description?

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1 unless -- I know -- most of the time there's not a
 2 checklist, I've got to go here, I've got to be to CPP 1 at
 3 8:00, holy smokes, and do this, and then be at -- you
 4 know, certainly there's day to day functions where maybe
 5 there is a confined space or a permit to be issued or
 6 something like that, and that's a piece of the work, but
 7 left day to day they have discretion and independent
 8 thought of what they're going to do, what -- where do they
 9 see the hazards. I could not tell him what's -- or, his
 10 super -- what the hazards were unless I was out doing my
 11 own observation or walk-through and I might -- then I
 12 could. If I had him accompanying, we might jointly
 13 discover it, or something, and then we'd say this -- but
 14 day to day as the eyes and ears they're out to find those
 15 types of hazards. And in -- either in behaviors or in
 16 conditions, and that's their -- so I guess every minute of
 17 every day really they're -- they're -- hopefully they're
 18 demonstrating that judgment.

19 Q Okay. Looking at Page 155 in the professional test, box
 20 one there -- or, check 1 is "Primary duty requires
 21 knowledge of an advanced type in a field of science or
 22 learning customarily acquired by . . . prolonged course of
 23 specialized instruction and study." Does -- do safety
 24 specialists have knowledge of an advanced type in a field
 25 of science of learning customarily acquired by a prolonged

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1 Q Yes.
 2 A Yes.
 3 Q And in Mr. Zuber's instance do you know how he obtained
 4 his knowledge of the safety field? In other words, was it
 5 by going to college and getting a degree, a four-year
 6 degree in safety, or was it by learning on the job or
 7 being self-taught?
 8 A I -- I don't recall at the time Mr. Zuber was hired what
 9 -- what the determination was was to hire him.
 10 Q And Mr. Zuber, when he taught classes, didn't teach
 11 classes -- taught classes for APC, he didn't teach classes
 12 at a university or school, he taught them in the
 13 industrial setting, as it were, the workplace, is that
 14 right?
 15 A I -- I think Ron taught at a university before he came to
 16 us, because I recall something to that....
 17 Q And....
 18 Abut for APC he taught primarily for our employees.
 19 yes.
 20 Q And when he taught at the university do you know if he was
 21 teaching safety or not?
 22 A I don't recall, I just recall him....
 23 Q All right.
 24 Asomething about it.
 25 Q And I assume, looking at the box number 2 under

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1	professional, that's the requires consistent exercise of	1 tests?
2	discretion and independent judgment. If I asked you about	2 A I don't know that I came to the conclusion of both. I
3	that under the professional test I'd get the same answers	3 came to the conclusion at the time that they were -- that
4	that I got for the administrative test, is that self.....	4 they met the exempt -- exemption.
5 A	That's right.	5 Q The exemption, and then did you make a determination as to
6 Q	Okay, all right. Sometimes I got to ask these questions	6 whether it was under one or other or both or.....
7 just for the record here. So looking at category number	7 A I really felt at the time that they qualified under both	
8 3, "performs work which is predominantly intellectual and	8 at the time. They had strong elements of both, so.....	
9 varied and is of a character that the output or result	9 Q And as of today has that opinion or position changed?	
10 cannot be standardized in terms of time." Would you say	10 A No.	
11 the safety specialist's job is predominantly intellectual	11 Q Okay. Is it correct that now you classify your safety	
12 and varied?	12 specialists as nonexempt?	
13 A	I think it takes intellect to do it, and variation and	13 A Yes.
14 character -- and I think I may have checked that, "or	14 Q Okay, and that's, we've been told, since perhaps March of	
15 results cannot be standardized in terms of time" is	15 '03?	
16 probably why I checked that at the time. The question	16 A Yes, I made everybody -- I had everybody change just a few	
17 mark there. I don't know if I -- if you're asking me why I	17 months ago.	
18 checked it, I don't know if the -- how I may have	18 Q All right. What -- did this law suit precipitate that	
19 finalized the determination, but definitely you can't	19 change?	
20 standardize, measure, safety specialist's performance in	20 A Not this particular law suit, but this type of -- this	
21 time.	21 type of action. I think there's too much ambiguity --	
22 Q	Well, a safety specialist with an assignment to cover wash	22 well, this is the only one, this case, Mr. Zuber. There's
23 bay be expected to be able to complete a certain number of	23 one other here that was taking place, but as I say, I want	
24 permits per day at the wash bay?	24 to get away from any gray area. I don't like gray areas.	
25 A	You mean like a factory, the more you can do the better	25 I didn't like it then, I don't like it now. And I -- when
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1	you are, or as the need arises would the safety specialist	1 I say, it's not a gray area on my part, but it obviously
2 be there -- be a final approver on?	2 seems to be.	
3 Q	No, in other words, say, well, we have a wash bay on Job	3 Q Okay, looking at Page 155, I refer you to that box at the
4 626, or 62 -- whatever it is, 626 or 626, whatever it was,	4 bottom of the right-hand column, it says, "Note, the	
5 and we're going to need at least two confined space entry	5 distinction between exempt and nonexempt can be very	
6 permits at the wash bay every day you work. Could that be	6 difficult to discern in certain cases. If you have any	
7 a requirement of the job of a safety specialist?	7 doubt consult the U. S. Department of Labor and your	
8 A	Would it be the requirement?	8 attorney." You indicated that you consulted the State
9 Q	Could it be?	9 Department of Labor. You didn't consult U. S. Department
10 A	To finalize the permit?	10 of Labor, is that right?
11 Q	Among your other duties we need two permits for confined	11 A No.
12 space entry at wash bays -- wash bay every day.	12 Q Okay, and did you consult an attorney?	
13 A	I'm not sure I understand -- is that a -- was that a	13 A No.
14 requirement of the safety specialist at the time?	14 Q Okay. And then I'd refer you to Page 182, which is the	
15 Q	Well, why don't you go ahead and answer that question.	15 third page of a letter from Mr. Boyle to you dated April
16 Was it?	16 4, '97. That last about inch-long paragraph indicates "I	
17 A	Yes.	17 know this information may be more than what you were
18 Q	Okay, to have two done a day?	18 looking for, but determining proper procedures under
19 A	I don't know about two.	19 federal and state wage and hours laws is very complex. In
20 Q	A certain number.	20 speaking with the department, they are often unclear on
21 A	A certain -- as the requirement, whether it was zero or	21 many issues related to exempt status. It appears case law
22 whether it was one, two or three, yes.	22 rulings are often contradictory resulting in the uncertain	
23 Q	Okay. So it's your position to this day -- or, I mean, is	23 application of the regulations. Of course, this creates
24 it your position to this day that the safety specialist is	24 even more uncertainty for employers." Do you recollect	
25 exempt both under the administrative and professional	25 this letter and that phrase there being communicated to	

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1 you by Mr. Boyle?
 2 A I was copied on it, right, or sent to me. Yes.
 3 Q Sent to you.
 4 A Sure.
 5 Q Okay. All right, and then I'd refer you to Page 184,
 6 there's a Paragraph Number 9 there near the top of the
 7 page and it says, "One of the most common and most
 8 expensive mistakes that employers make is to improperly
 9 label employees covered by the Alaska Wage and Hour Act as
 10 exempt. The Alaska Wage and Hour Act contains numerous
 11 exemptions for certain employees, such as agricultural
 12 workers", et cetera. Would you view those statements, and
 13 if there are any additional similar ones within these
 14 pages, as a warning that you ought to be very careful in
 15 classifying employees as exempt or nonexempt?
 16 A That's the way I interpret it, yes.
 17 Q Okay, do you think, given those warnings, that it would've
 18 been prudent at the time this review was done in 1997 to
 19 consult an attorney about the classification of these
 20 employees of the safety specialist job?
 21 A Not beyond -- at the time I didn't feel that, beyond what
 22 -- when I talked with the State, Mr. Carr, and had heard
 23 him, and I knew he was the authority for the State, I felt
 24 comfortable with what I -- my discussions with him, the
 25 direction that we were going. I didn't -- I wouldn't have

1 classified. But because they were adamant that they were
 2 not -- I involved them in the process, I wasn't making a
 3 wholesale change without involving them, because it
 4 affected their pay, their -- whether they were exempt or
 5 nonexempt. I wanted to involve them in the process. And
 6 so when I involved them they were adamant that they were
 7 not nonexempt, period. And so I said, look, guys, I've
 8 talked -- I've talked to Mr. Carr, guys, I, you know, want
 9 to do the right thing in good faith, but I need to change
 10 this. And they -- you know, it was a -- it was a problem,
 11 because -- and it's a different, a little different
 12 environment. We all work -- like I said earlier, we all
 13 certainly live in the same camp, we eat together and all
 14 that, we're -- certainly some friendships that have
 15 developed over the years. And said -- so I went back to
 16 Mr. Carr and said, could you put that in some kind of
 17 letter that I can show these guys and say, look, unless
 18 you can show me something to the contrary, I've got to do
 19 this. I didn't have that in the case of safety specialist
 20 because I wasn't changing their classification.
 21 Q Did it occur to you that some day you might have a safety
 22 specialist who was going to be adamant that they were
 23 nonexempt from the wage and overtime laws, and that you
 24 might want to have a letter -- similar letter for that
 25 instance?

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1 gone to a labor attorney beyond that, no.
 2 Q In reclassifying the -- is it materials supervisor?
 3 A And foremen, or supervisors, yes.
 4 Q Okay, the one.....
 5 A It wasn't super -- they were, yes, foremen, supervisor.
 6 Q What was the name of the position you got the letter on
 7 from Mr. Carr, is that materials supervisor? Right,
 8 that's Page 203 of Exhibit 4. Mr. Carr's letter. It says,
 9 I reviewed the information documenting the duties of
 10 materials supervisor. In that instance you got that
 11 letter in order to show to those particular materials
 12 supervisor employees, right? Isn't that what you told us?
 13 A Yes. Yes.
 14 Q Okay. In the instance of the safety specialist you felt
 15 comfortable about doing that classification without a
 16 letter from Mr. Carr, but to the contrary, I guess
 17 you've -- well, let me rephrase this. You got the letter
 18 about the materials supervisors to satisfy the, I guess,
 19 one of the materials supervisors? Let me rephrase this.
 20 Why'd you get the letter from Mr. Carr about the materials
 21 supervisor?
 22 A I asked for the -- the actual letter from Mr. Carr
 23 specific to materials supervisors, which wasn't just the
 24 supervisors at the time, there were -- there were a number
 25 -- there were other positions, I think, that were

1 I would've hoped, if I had a safety specialist who felt
 2 that way in the process, we -- could've come to me before
 3 and said that, because it would've been a different
 4 situation.
 5 Q When you talked to Mr. Cannon about his feeling or input
 6 on being exempt or nonexempt, Mr. Cannon was a safety
 7 supervisor, right?
 8 A Yes.
 9 Q Okay. Did you talk to safety specialists about the
 10 question of whether or not they ought to be classified
 11 exempt or nonexempt?
 12 A I don't recall. I think they could have been -- I had a
 13 lot of informal, if you will, discussions, it's a daily
 14 thing, walk into people's office, safety specialist
 15 standing around with the supervisor kind of thing. I
 16 honestly don't recall.
 17 Q And probably your prior answer answered this one, but just
 18 for the record, did you talk to Mr. Zuber about
 19 classification as a -- exempt or nonexempt as a safety
 20 specialist?
 21 A I don't recall. I -- I don't believe so.
 22 Q As far as travel days go for safety specialists did APC
 23 and the safety specialists have an agreement that if they
 24 traveled and worked they would get their one day's pay?
 25 A Do -- if they traveled and worked -- if any exempt

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1 employee worked any time of the day -- I mean, not five
 2 minutes, but if they worked a half hour -- and a lot of
 3 times there was a change-out done which would warrant only
 4 a half, maybe in the case of Mr. Zuber where he flew up
 5 from the Lower 48, he's a non -- or, out of state, comes
 6 in, did a change-out with his alternate, if he worked a
 7 half hour he was paid for the day undiminished. We had
 8 one day, not quarters or halves or anything less than it
 9 was a one day.

10 Q And typically on change-out day would it be that a safety
 11 specialist would be on duty, the airplane comes in, the
 12 new safety specialist comes and meets the old safety
 13 specialist, they spend half an hour or so discussing
 14 what's happening, the old safety specialist takes his bag,
 15 walks over, gets on the airplane and goes home?

16 A Bags checked previous, but yes, runs -- yeah, typically
 17 they have a quick change of -- really the way it works is,
 18 yes, they would have a quick discussion, anything, hot
 19 topics, typically the specialist leaves -- with almost all
 20 positions, including my own as operation man, would leave
 21 change-out notes, pertinent, kind of a what happened
 22 during the week, any issues, concerns, maybe in their
 23 case, safety specialist, it would be areas of potential
 24 hazards, education, training, things that are going on in
 25 their position that needs -- that knowledge needs to carry

1 Q Have you seen, Mr. Nelson, the documents that -- I'm
 2 sorry. Have you seen in documents that Mr. Zuber provided
 3 to the Defendant in this case in discovery that he
 4 describes as his daily logs?

5 A No.

6 Q Okay. Do you understand that in this case Mr. Zuber's
 7 represented he worked a varying range of hours, oftentimes
 8 in a range of, say, 11 and a half to 15 hours a day?

9 A You asked me did he or is he asserting that?

10 Q The first question is do you understand that he is
 11 asserting that?

12 A Okay, I believe you.

13 Q Okay, the second question is do you have a way of
 14 disputing any of those particular claims for the hours
 15 worked on those days?

16 A What -- which day?

17 Q Well, he represents on August 20th -- or, rather August
 18 2nd, 1999, he worked 13 hours.

19 A Can I look at what you're.....

20 Q Sure, you bet. And just for the record I'm showing you
 21 Zuber's -- or, Plaintiff's disclosure Dates stamp page
 22 373, which represents the August 2nd, 1999, daily log for
 23 Zuber.

24 A I don't know, you've just got 13 written here. I don't --
 25 I don't know if that included the hours worked, the lunch

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1 over.

2 Q And that applies to a lot of positions on the Slope,
 3 doesn't it? At change-out they.....

4 A Well, but typically not a -- maybe a nonexempt where
 5 you're -- if you're setting up scaffolds, well, you're
 6 setting up scaffolds. There's not a -- it's not a change-
 7 over other than maybe.....

8 Q You don't have to tell the new guy.....

9 Amy foreman pissed me off this week. I mean, you
 10 don't leave those kind of change -- you might tell them at
 11 change-overs, but.....

12 Q And in sort of the normal course of affairs would a safety
 13 supervisor do any and all of the duties of a safety
 14 specialist?

15 A Could they do all of them or did they do all of them?

16 Q Did they.

17 A No. Certain specialists, in the case of maybe Ron, were
 18 higher qualified than the supervisors. In the case of Ron
 19 Zuber was the champion or supreme, if you will, trainer in
 20 SIMS, so he was our -- by far the specialist in that, so
 21 he was more qualified than the supervisor, and that's a --
 22 for an example.

23 MR. COVELL: Why don't we go off record for a minute.

(OFF THE RECORD)

(ON THE RECORD)

1 breaks, I don't know. I can't -- I can't -- I don't
 2 recall August 2nd, '99.

3 Q Okay. As far as the duties of the safety specialist
 4 during mealtime, if a safety specialist was called at
 5 mealtime would they be expected to abandon their meal and
 6 go out in the field and take care of whatever problem
 7 there might be in the field?

8 A What kind of problem?

9 Q Permitting.

10 A It would be at their discretion. They could say, look, I
 11 just sat down for dinner, give me -- give me a half hour
 12 and I'll be out. If they got a radio call and said
 13 there's been a catastrophe and employee Z got his head
 14 blown off, I would think the discretion they would use is
 15 I'll be right there.

16 Q Okay, would a situation where a crew was all ready to go
 17 and do some work in a confined space entry, say, and the
 18 only thing they needed was the safety specialist to do his
 19 portion of the permitting process, would that be
 20 considered enough of an emergency or urgent situation to
 21 cause the safety specialist to abandon their meal and
 22 attend to business?

23 A Depending upon the job, I would hope the -- I can't give
 24 you a specific incident. If -- from the practice it would
 25 be if the job was set up, if there was, you know, a --

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1 maybe a crew standing around, why they didn't -- typically
 2 they should give the safety specialist advance notice,
 3 obviously. We're doing this job, he should be aware of it
 4 anyway, because it's within his confines of his -- of his
 5 work area or the group that he's watching over, so he
 6 should know what work is coming. But if they called and
 7 said, could you come over and, you know, walk the job with
 8 us, give us your judgment, or are we ready to go, you see
 9 any, you know, whatever, sign off on a permit, it's up to
 10 him. He could say, look, guys, give me 15 more minutes,
 11 I'll be over there, I'll come over right now, because this
 12 is a free cafeteria, so to speak, leave his tray there, go
 13 over and -- and do whatever they request and come back in
 14 20 minutes and go back and get a whole new meal. Could he
 15 do -- absolutely.
 16 Q So a safety specialist, absent an emergency, could say,
 17 no, I'm going to eat and then I'll be out there? Is that
 18 what you're telling me?
 19 A Well, could. Have we ever reprimanded a safety specialist
 20 for not going out immediately for some -- no.
 21 Q Okay. Do you have with APC or your AES a position called
 22 a field inspector?
 23 A Not that I'm -- a field inspector? Not that I'm aware of.
 24 As it relates to?
 25 Q I understand it was a job that Alyeska had at some point

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1 risk free work projects would've been completed and, you
 2 know, it would be sometime maybe -- do you know when it
 3 was paid out? Would've been....
 4 Q I -- I don't, no.
 5 Aas soon as we make the determination, very quickly we
 6 pay it out.
 7 Q I understand it might've been January or February, but I
 8 don't know.
 9 A Yeah, okay, that's -- that's right. I mean, as soon as a
 10 determination's made. If -- if the payout was in April,
 11 we probably made it two weeks before then.
 12 Q Was that based on the performance of the safety specialist
 13 in the year 2000?
 14 A It was -- was the bonus?
 15 Q Yes.
 16 A Was it based on their individual performance?
 17 Q Yes.
 18 A No.
 19 Q Was it based on safety specialists as a group?
 20 A No.
 21 Q Okay, well, in part you told me that you had to have no
 22 infractions and some other criteria, right?
 23 A You could lose your bonus if you had -- if you didn't --
 24 if you had infractions, yes.
 25 Q Okay. Are the criteria for receiving a bonus written down

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1 which struck me as being something sort of between an
 2 engineer and a quality control guy.
 3 A Oh, the QC inspectors.
 4 Q Well, something....
 5 A Mechanical, electrical, that type....
 6 Q Something between the two is what my drift on it was.
 7 A I -- I don't know what you're -- I don't know.
 8 Q That's fine. Did the safety specialists, or did some
 9 safety specialists receive a bonus around January of 2001?
 10 A I don't remember the time frame. Are you referring to the
 11 annual bonus that Ron was so upset about in this?
 12 Q Right.
 13 A Yes, if they were employed they would've got the -- they
 14 would've got the bonus.
 15 Q What were the criteria for getting the bonus, if any?
 16 A Criteria were that, A, you were working and you didn't
 17 have any infractions, a variety of infractions, safety as
 18 well as disciplinary actions, and if you were employed at
 19 the time that the determination was made to pay out the
 20 bonus then you would receive it.
 21 Q Okay. And do you know when that determination was made in
 22 the year 2000?
 23 A I don't know. 2001 you mean?
 24 Q 2001.
 25 A It would've been made after the end of the year, after

1 anywhere?
 2 A No.
 3 Q Okay. Do you know if.....
 4 A It's....
 5 Q I'm sorry, go ahead.
 6 A Oh, I say it's a discretionary bonus.
 7 Q And at whose discretion?
 8 A At the company's discretion.
 9 Q Is that some kind of pass-through thing that comes from
 10 ARCO or somebody or is that just an APC program?
 11 A Partially funded by the client. It's varied year to year,
 12 you'd have to really say the year. Some years we didn't
 13 have -- you know, we'd hoped to give more of a bonus than
 14 others, some years not, and so we combined a couple of
 15 years the two different type of jobs, the operations and
 16 maintenance jobs with the construction jobs, robbed money,
 17 if you will, from -- really from the profits of the
 18 company to put back in the pool to where we would have
 19 more monies available to pay out to the -- to the current
 20 employees.
 21 Q When it came, at least in part, as a pass-through from
 22 ARCO or whomever did they designate that as being tied to
 23 a particular year or a particular year's performance?
 24 A Part of it and part of it was tied to projects, which
 25 project could range over a period of months or years.